

hosue, *viz.* he offered to prove, that these lands were not the common debtor's the time of leading of any of the apprisings against his estate; and also for freeing him from Torhendry and Bogend: and siclike for allowing Pitsligo a new diligence for proving Ludquhairn's bangistry, whereby the Town of Aberdeen were debarred from the rents of Torhendry and Bogend, several years after their entry to the possession of the same; as also for proving sundry other articles.

The Lords, on the 27th of March, having heard this petition and answers, they refused to grant any commission, or further term, but decerned; and remitted to Carse, to whom the calcul is referred, to consider what shall be produced by the petitioner before extracting, for further instructing his defalcations; and to allow the same.

Pitsligo complained, that the Lords had decerned, (only it was the end of a Session,) before an auditor was nominated, and before any of the parties had given in their accounts, that objections might be made against the same, and before Pitsligo could have time to instruct or produce anent his defalcations; and therefore he gave in another bill, craving the Lords would allow him to be heard before an auditor, whom he desired they would appoint; and, seeing nothing was remitted to my Lord Carse, but the adjusting of the calcul, that they would remit the whole matter to him, with power to receive what documents Pitsligo should produce, and to hear and determine thereanent.

The Lords, on the last of March, referred to Carse to adjust the accounts and calcul, when he orders the extracting the decret. *Vol. I. Page 404.*

1686. *February 19.* SIR THOMAS BURNET of LEYS *against* SIR PETER FRASER of DOORS.

IN the action for payment, pursued by Sir Thomas Burnet of Leys, against Sir Peter Fraser of Doors, upon Dr Fraser's bond, as executor to Doctor Reid, for the use of his legatars; Kemnay having refused a diligence, the Lords, on Sir Peter's bill, ordained him and Dr Andrew Fraser of Kinmundy to condescend on the writs, and to give their oaths of calumny if they had the writs they craved, in town, or in whose custody they were; and if they deponed *negative*, or if Leys could not produce or supply them, then they granted a diligence.

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1686. *February 19.* THE KING *against* MURRAY of LIVINGSTON, LORD TORPHICHEN, and ELIES of ELIESTON.

THE King's reduction against Murray of Livingston, the Lord Torphichen, Mr John Elies, and other heritors adjacent to Drumshorlan-muir, was reported by Pitmedden; and the Lords find not only those heritors whose charters bear the muir of Drumshorlan *per expressum*, but even those which only carry the common clause, *cum communi pastura*, have a right of servitude on it, if they

can prove prescription by forty years' possession ; though it was alleged to be imprescriptible, as a part of the King's patrimony, though unannexed.

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1685 and 1686. The COLLEGE of PHYSICIANS of EDINBURGH *against* GEORGE STIRLING, an Apothecary.

1685. *March 25 and 26.*—DOCTOR Cranstone, as procurator-fiscal to the College of Physicians of Edinburgh, having pursued George Stirling, apothecary, before their court, for inroaching on the practice of medicine in curing a young man ; and on his not appearing, having holden him as confessed, they fined him in L.5 sterling. This being suspended, his special reasons were, *1mo*, That he had not contravened the patent, nor practised in medicine ; for all he did to the young student, son to Johnston of Grattay, was to give him a clyster, and to let blood, which are manual operations. Yet the physicians ALLEGED, the using of these was very dangerous to the people, if mistaken or wrong applied ;—so they would put a necessity on us to call them on all occasions. *2do*, That it arose from an external cause, *viz.* a strain in playing at the bullets, as the boy declared, and so this cure by their patent did not concern the physicians ; diseases arising originally from internal causes only, being made the proper and privative subject of their calling.—But it is very difficult to conjecture, from symptoms, whence the true and real cause is. *3tio*, That he was a stranger, and no burghess ; and their College should not extend to such. *4to*, That it was in a case of extraordinary necessity and haste, *et qui non patiebatur moram.* *5to*, That he got nothing for his pains ; and so acts of charity cannot be censured. *6to*, That within twenty-four hours he sent for physicians to him.

The general defences against the decreet were, that it was null ; in respect it held him as confessed when he was not personally warned to the diet *pro confesso*,—though he was personally warned to a former diet. *2do*, They clandestinely took a precognition, (which is only competent to the Privy Council, as *officii nobilioris*, and that not without a warrant from his Majesty ;) and finding that did not prove, they suppressed it, and referred the libel to his oath. *3tio*, The decreet bears no interlocutor finding the libel relevant, as it ought to do ;—though the referring it to oath *tacite* includes that. *4to*, They are expressly bound up by their patent not to proceed to the fining of any chirurgeon-apothecary of Edinburgh, unless one of the Magistrates be present with them, and without whose consent it shall not be leisome to fine them. And whereas it is pretended they warned the Magistrates to come :—*1mo*, It was at an unseasonable time, when they were attending the Circuit. *2do*, They did not call them to the first Court, whereas they ought *in omnibus actibus judicialibus assidere*, and not be called merely as ciphers to the last act of fining and sentence. *3tio*, The Magistrates refused ; because Sir Robert Sibbald, the Preses of the Physicians, declared he would not let them preside, (which is their privilege in all such Courts within